

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LENNY COULOMBE,

Plaintiff,

v.

TOTAL RENAL CARE HOLDINGS, INC.,
DAVITA, INC.,

Defendants.

No. CV6-504 JLR

DECLARATION OF STEVE UDICIOUS
IN SUPPORT OF DEFENDANT'S CROSS
MOTION FOR SUMMARY JUDGMENT
RE: LIABILITY ON WASHINGTON
WAGE STATUTE CLAIM AND
DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT

STEVE UDICIOUS states and declares as follows:

1. I am over the age of 18, competent to testify, and make this declaration based upon my personal knowledge.

2. DaVita Inc. operates kidney dialysis centers nationwide. Following extraordinary growth in the 1990's, DaVita's stock, in the Spring of 2000, was trading at a record low. Many employees had outstanding option shares that were priced above \$15, and were now essentially valueless to those employees. This had a negative impact on employee morale, and DaVita was concerned that many employees would leave the company. In addition, DaVita's executives were very concerned about losing talented employees.

1 3. During this period DaVita was also having operational difficulties and was
2 losing money. In an effort to turn the company around, DaVita replaced its senior
3 management team, beginning in the fall of 1999 and continuing through the first half of 2000.
4 If significant numbers of DaVita's other key management employees had also decided to
5 leave during this period, it would have made turning things around at DaVita very difficult, if
6 not impossible.
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8 4. In an effort to retain DaVita's many talented employees, DaVita's executives
9 made the decision to exhaust DaVita's pool of available option shares and grant some
10 employees new option shares at lower strike prices. DaVita's Board, recognizing that it could
11 not operate with an exhausted option pool, moved forward with this grant of option shares in
12 the spring of 2000 based on the promises of DaVita's CEO and senior management team that
13 they would ask DaVita's employees to turn in their underwater option shares. The Board also
14 directed management to seek shareholder approval for the issuance of additional option
15 grants.
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17 5. In November 2000, DaVita requested that hundreds of employees voluntarily
18 relinquish their option shares valued over \$15 per share, which were commonly known
19 within the company as way-out-of-the-money, or WOOTM, options. The employees were
20 given the choice to relinquish these option shares, and could, if they wanted, retain these
21 option shares. The relinquishment program was not mandatory, and many employees, in fact,
22 chose to retain some or all of their option shares.
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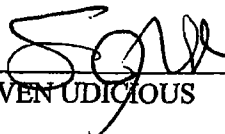
24 6. Overall, about 100 people, or almost one-third of DaVita's option holders,
25 chose not to participate in the voluntary WOOTM relinquishment program. Employees who
26 chose to keep their WOOTM stock option shares suffered no adverse employment
27 consequences because of their decision.
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1 7. Following DaVita's successful stock relinquishment program, the company
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3 also engaged in an effort to obtain shareholder approval for the issuance of an additional 2.75
4 million option shares. The company's proposal was vetted through an institutional
5 shareholder approval service, Institutional Shareholder Services ("ISS"). ISS's model for
6 evaluating DaVita's proposal included an assessment of the number of outstanding and
7 available option shares, and their expiration periods. ISS, considering the totality of DaVita's
8 stock option programs, including the option shares relinquished through the WOOTM
9 program, recommended that DaVita's shareholders approve the company's proposal to issue
10 an additional 2.75 million option shares. The approval to issue 2.75 million additional option
11 shares replenished DaVita's pool of available option shares. These additional option shares
12 were used to attract and retain talented individuals to work for DaVita.
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15 8. Following his layoff, plaintiff sent a letter to DaVita requesting exercise of the
16
17 60,000 stock options he had voluntarily relinquished five years earlier. A true and correct
18 copy of that letter is attached hereto at Exhibit "A."
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21 9. DaVita's grant of stock option shares to any employee is entirely discretionary.
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23 The decision to grant a stock option is specific to each individual employee. Employees are
24 not promised stock options as a part of their compensation package, and are not guaranteed to
25 receive stock options from year-to-year. DaVita uses stock options to attract and retain
26 talented employees. Any stock options that Mr. Coulombe may have received, including
27 those granted to him in 1997 and 1998 were entirely discretionary in nature.
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31 Signed this 25th day of September 2006, at Rosemont, Pennsylvania.
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STEVEN UDICIOUS

DECLARATION OF STEVE UDICIOUS - 3
(NO. CV6-504 JLR)
[38585-0002/SL062640.190]

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CERTIFICATE OF SERVICE

On September 25, 2006, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

David E. Breskin
Short Cressman Burgess PLLC
999 Third Avenue, Suite 3000
Seattle, WA 98104-4088
Attorneys for Plaintiff

— Via hand delivery
— Via U.S. Mail, 1st Class,
Postage Prepaid
— Via Overnight Delivery
— Via Facsimile
X Via E-filing

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, on September 25, 2006.

s/James Sanders, WSBA #24565
State Bar Number: 36919
James Sanders, WSBA #24565
Brian M. Flock, WSBA #36919
Attorneys for Defendant
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December 29, 2005

RE: Stock Option Exercise Election

I, Leonard J. Coulombe, with Social Security Number 032405888, would like to exercise the following of my vested stock options at the price per share and method selected below:

| | Grant Date | Initial Award Size | Options Price | Number of Options to Exercise |
|--|------------|--------------------|---------------|-------------------------------|
| | 8/12/1996 | 8,333 | 23.025 | 8,333 |
| | 4/24/1997 | 8,333 | 18.75 | 8,333 |
| | 4/24/1997 | 25,000 | 18.75 | 25,000 |
| | 2/27/1998 | 30,000 | 32.1875 | 30,000 |

Cashless Exercise/Same-Day-Sale (☒ BONY)

Mail Check to this address: 6704 95th Street Ct NW Gig Harbor, WA 98332

I understand that federal income tax and other income taxes will be incurred upon exercise of my stock options. Taxes computed will be included on my W-2 Form (current or former employees) or 1099 (non-employees) for the year of the exercise. If I am a current or former employee, I understand that these taxes will be deducted from the exercise proceeds.

Sincerely,

Leonard Coulombe
Signature

